upa
.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.3120 OF 1994

Bank of Maharashtra)
a Banking Corporation constituted)
by the Banking Companies (Acquisition)
& Transfer of Undertakings) Act, 1970)
having its Head Office at Lokmangal)
1501, Shivajinagar, Pune 411005 and)
having its one of the Branches)
Hingana Industrial Estate, Nagpur.).. PETITIONER

VERSUS

1) The Union of Maharashtra Bank)
Employees through its Deputy)
General Secretary having its)
office at 342, Hampyard Road)
Congress Nagar, Nagpur-12.)

2) Mr.R.G. Sindhakar)
Presiding Officer)
Central Industrial Tribunal)
4th Floor, City Ice Building)
298, P.Nariman Street, Fort)
Bombay 400 001.).. RESPONDENTS

Mr.N.N.Bhadrashete for the Petitioner.

Mr.S.M.Dharap for Respondent No.1.

Respondent No.2 formal party.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 19TH SEPTEMBER 2006

ORAL JUDGMENT :

. The Petitioner Bank has challenged the Award passed by the Central Government Industrial Tribunal No.1 dated 20th August 1993. By this Award, the Industrial Tribunal held that the action of the

Petitioner Bank in stopping payment of City Compensatory Allowance and House Rent Allowance to the staff employed in their Hingna Industrial Estate Branch was unjustified. The Tribunal held that the workmen employed in that branch were entitled to the same rates as applicable to the Nagpur staff.

2. The Bipartite settlement dated 19.10.1966 classified areas in which the bank had branches, for the purpose of wages and other monetary benefits. Area I consisted of the metropolitan cities and other places with a population of 12 lacs and more. Area II included other cities with a population of 1 lac or more, besides the ones named. Area III included all other places where the bank had its branches and were not included in Area I or Area II.

3. Pursuant to various subsequent bipartite settlements House Rent Allowance and City Compensatory Allowance was payable to the staff of the petitioner-bank. Under the settlement of 12.10.1970 workmen employed in all categories of the bank in Area I were to be paid City Compensatory Allowance at specific rates mentioned in the settlement w.e.f. 1.1.1970. By a subsequent settlement of 8.9.1983, the rates payable as House Rent Allowance and City Compensatory Allowance were modified and the branches in which these rates were to be paid were also to be assessed with respect to the

population figures. These rates were to be paid w.e.f. 1.3.1981.

4. It appears that the Petitioner bank had started paying House Rent Allowance (HRA) and City Compensatory Allowance (CCA) in accordance with bipartite settlement and the circulars issued from time to time. After obtaining permission from the Reserve Bank of India on 11.12.1971, the Petitioner Bank opened a branch at Nagpur in Hingna Industrial Estate. The employees of the branch at Hingna Industrial Area were getting CCA on the basis of 1981 census at par with the employees working in the Nagpur branch. The Petitioner bank however, issued a notice under section 9A of the Industrial Disputes Act on 10.3.1987 withdrawing CCA and HRA w.e.f. September 1989. Aggrieved by this decision of the Petitioner bank, the Union of India raised a demand which was referred for adjudication before the Central Government Industrial Tribunal No.1. Pleadings were filed by both the parties. The Union contended that the Petitioner Bank had been categorised as a 'A' class bank. The employees of the bank were therefore entitled to CCA and HRA in accordance with the bipartite settlement. These allowances were paid in accordance with the census figures of 1981. The bank had withdrawn this payment w.e.f. September 1981 illegally according to the Union.

5. On the other hand, it was contended by the Petitioner Bank that Hingna where the branch was situate was not a part of Nagpur city but was a village with a population of only 7100 and therefore could not be included in the urban agglomeration. It was for this reason that the bank had withdrawn the payment and had sought recovery of the payments already made in respect of the HRA and CCA.

6. After hearing the parties, the Tribunal decided the Reference in favour of the Union and held that the employees working with the Hingna Industrial Estate branch were entitled to CCA and HRA at the same rates which were being paid to employees of other branches in Nagpur. The Tribunal directed that the recoveries, if any made from the employees, were to be refunded to them.

7. As aforesaid, the HRA and CCA was paid under the relevant bipartite agreements. The contention of the bank is that since the Hingna branch does not have the population which would allow it to be categorised in area I, the bank was not bound to pay HRA and CCA at those rates.

8. A perusal of the circular of 14.10.1983 annexed

to the Petition indicates the rates at which CCA and HRA were payable, depended on the population of the areas in which the branches were situate. In annexure 2 of this circular, cities with a population of Rs.2 lacs and more excluding those places mentioned at annexure 1 were mentioned. The rates payable for the branches in these cities were also satisfied. 15 branches were included under the head Nagpur. The Hingna Industrial Estate branch was one of the branches included under this head. Accordingly, the Petitioner bank had been paying the HRA @6% of the pay with a maximum of Rs.8/- per month. The subsequent circular was issued upgrading Pune and Nagpur cities based on the 1981 census. These cities were included to area I. Accordingly, CCA and HRA were to be paid to employees in those branches in Nagpur at the rates payable to other branches in area I. Annexure 2 to the circular also included under the head Nagpur, the Hingna Industrial Estate branch.

9. There is no circular or agreement or any document deleting the Hingna Industrial Estate branch from Annexure II to the circular dated 31.10.1983. Therefore, the decision of the management to give a notice of change to withdraw the payment of CCA and reducing the HRA was illegal and recoveries made on that count were also illegal. The contention of the bank that the Hingna Industrial Estate branch will not be

included in the Nagpur Agglomeration area w.e.f. 16.4.1987 as per the 1981 census is incorrect as the payment of CCA and HRA were being done in accordance with 31.10.1983 circular. The urban agglomeration mentioned in the minutes of 16.4.1987 did not mention Nagpur and, therefore, according to the Petitioner Bank they were not bound to pay CCA and HRA at the rates which they were paying.

10. Despite the minutes of 16.4.1980, the bank had issued a circular in 1983. It would not therefore now be possible for the Bank to withdraw that allowance without any justification. The Industrial Court Tribunal while deciding the Reference has found that the action of the bank was unjustified and that it could not recover any amounts from the employees.

11. In my view, there is no need to interfere with this award. There is no error apparent on the face of the record nor is there any perversity in the findings of the Tribunal.

12. On a perusal of the impugned Award and after considering the arguments advanced at the bar, in my opinion, the Award of the Tribunal must be upheld. The Bank was paying HRA and CCA in accordance with the Bi-partite Settlement and the Circulars issued. Nagpur

has been mentioned in the schedule of Circulars 14th October 1983 and 31st October 1983. The Hingana Industrial Estate branch has been included in the Nagpur area. In my view, therefore, unless the Hingana Industrial Estate branch was excluded from the Nagpur area, there was no question of the management being permitted to stop paying the HRA and CCA at the rates which were being paid there. The notice of change, therefore, was wholly unjustified.

13. Apart from this, there is evidence on record showing that the Bank always considered Hingana Industrial Estate branch as part of the Nagpur area and transferred employees accordingly. Hence, there is no need to interfere with the findings of the Tribunal. There is no perversity in the Award or any error apparent on the face of the records warranting interference under Articles 226 and 227 of the Constitution of India.

14. Writ Petition dismissed. Rule discharged. No order as to costs.